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September 27, 1995

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation
Docket Nos. MM Docket 93-215 and MM Docket 92-266

Dear Mr. Caton:

Transmitted herewith by its attorneys on behalf of the Cable Telecommunications Association ("CATA"), is an original and 11 copies of a Consolidated Opposition to Petitions for Reconsideration in the above-referenced proceedings.

If any additional information is desired in connection with this matter, please contact the undersigned counsel.

Sincerely,

Robert J. Ungar

Enclosure

rju00056

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Implementation of Sections	)	
of the Cable Television	)	MM Docket 93-215
Consumer Protection and	)	
Competition Act of 1992	)	MM Docket 93-266
	)	
Rate Regulation	)	

CONSOLIDATED OPPOSITION TO PETITIONS FOR RECONSIDERATION

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	)	
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CONSOLIDATED OPPOSITION TO PETITIONS FOR RECONSIDERATION

INTRODUCTION

1. The Cable Telecommunications Association ("CATA") hereby opposes the petitions for reconsideration of the Eleventh Order on Reconsideration in this proceeding (released June 5, 1995) that were filed separately by the Georgia Municipal Association ("GMA") and the New Jersey Board of Public Utilities ("the New Jersey Board"). CATA is a trade association representing owners and operators of cable television systems serving approximately 80 percent of the nation's more than 60 million cable television subscribers. CATA files this opposition on behalf of its members who will be directly affected by the Commission's action.

2. From the very beginning of its struggle with the obligation to adopt cable television system rate regulations as required by the Cable Act of 1992, the Commission has recognized the unique circumstances of smaller cable systems. Neither of the Commission's rate regulation schemes (FCC Form 393 and FCC Form 1200) were sufficiently flexible to deal squarely with small systems. Because their building, equipment, installation and programming costs are the same as for larger systems, small

systems' per subscriber costs are higher. But, because the Commission's rules were derived from revenue, not cost, data, unless they filed complicated and costly cost-of-service showings, small systems were not able to make their case. Smaller systems' costs of capital are higher because they do not have the "borrowing power" of larger systems and, of course, a small subscriber base over which revenues can be raised. In addition, small operators have been burdened by the complexity of the rate regulation process and overwhelmed by the sheer volume of paperwork required to comply with it.

3. Over a two year period, as it learned more and finally had the breathing space to address the issue, the Commission began to amend its procedures to reduce the impact of rate regulation on small systems. Among other actions, it adopted a "short form" (FCC Form 1225) for cost-of-service showings by small systems; it permitted a 90 day grace period after regulation begins for making rate justifications; it adopted specialized "going forward" rules; and it permitted "alternative rate regulation," permitting small systems and their franchising authorities to reach their own rate determinations within the structure of the Cable Act.

4. Finally, in June the Commission released the Sixth Report and Order and Eleventh Order on Reconsideration, the subject of this proceeding. Carefully balancing its concern that the public not be charged anti-competitive rates with its growing conviction that its rules did in fact work a significant burden on small systems, the Commission re-defined "small" cable system and adopted a greatly simplified cost-of-service procedure. This procedure, using a new form (FCC Form 1230) and an easy formula, enables small systems to include their disproportionate operating costs and

required rate of return in a calculation of a reasonable rate. A rate of $1.24 or less per channel will be considered reasonable. Clearly, the Commission has two goals -- to permit many smaller systems to establish rates that more reasonably reflect the unique situation of small cable systems, and to reduce the burdens of rate regulation.

THE PETITIONS

5. Petition of the Georgia Municipal Association GMA's primary concern with the Commission's new rules is that the presumably reasonable rate of $1.24 per channel was derived from a sample of cost-of-service forms "without regard to whether the operators calculated their permitted rates correctly." GMA is confused. As the Commission clearly explained, it did not arrive at the $1.24 figure by reviewing rates arrived at by cable operators. Rather it used cost-of-service information from small systems to test the formula that it ultimately adopted. The Commission's formula produced an average figure of $0.93 per channel. One standard deviation was added, raising the number to $1.24. Thus it is not true, as GMA alleges, that permitted rates were taken directly from Form 1220 filings.

6. GMA also suggests that, based on several Commission rate orders in cost-of-service proceedings, the Commission cannot rely on information supplied by the cable operators. GMA cites three cases in particular where the Commission disallowed various rate base or expense items. (We note that in the cases referred to, although certain items were, in fact, partially disallowed, the Commission nevertheless found the rates that were submitted were justified. One may presume that in these cases the permissible rate was limited in the first instance largely by market considerations and not by the

strictures of the Commission's cost-of-service regulations. Indeed, it is likely that the rate arrived at through cost-of-service procedures was considerably higher than the rate charged.) It is clear, however, that in its new approach to small system rate regulation the Commission intends to take a much more lenient approach to data submitted by small system operators, in part to reduce administrative burdens and in part to recognize the greater operating costs of small systems. GMA urges the Commission to "complete its review" of the cost-of-service filings used to test the new formula. GMA misses the point. The Commission has adopted a new cost-of-service process for small systems. Eligible operators with pending cost-of-service filings before the Commission may now amend their filings using the new formula. Presumably, most will. Why then, should the Commission "complete its review" of what will become vestigial filings?

7. The remainder of GMA's petition merely recounts a number of experiences it has had with the new small system rules. These anecdotes are interesting as much for what they reveal about GMA as for what they reveal about the operation of the new rules. For instance GMA attaches a letter from Charter Communications to the mayor of Manchester, Georgia. GMA says that its submission of the letter is intended to show that "Cities have begun receiving letters from cable companies concerning the new rules, with "warnings" of future rate increases." (emphasis supplied) The letter, by any standard, most temperate and amicable, simply explains the new rules, points out the system's commitment to improvement and informs that it will be seeking a rate increase. In other words, Charter was complying with the new rules. GMA obviously finds this to be an ominous sign.

8. In another letter, a cable system points out to the mayor of Chatsworth, Georgia that any refunds the city might order in a rate proceeding would probably be more than offset by rate increases the system anticipated either as a result of the standard cost-of-service showing or the simpler showing permitted by the new rules. Again, GMA is deeply disturbed. But why? Is it that draconian rate decreases for small systems as anticipated by GMA may be prevented or, is it that local bureaucratic processes for rate regulation have been rendered less relevant? Whichever the concern, neither is the foundation for a petition for reconsideration. Further, the letter clearly intends to ease the confusion and burden for subscribers by avoiding unnecessary and misleading fluctuations in cable bills. This is not, apparently, what consultants who want to take "credit" for phantom and incorrect rate reductions want. But it is totally reasonable for the Commission.

9. GMA's final argument, that in administering the new cost-of service rules for small systems, franchising authorities will have a new and unfair burden is also made by the New Jersey Board and will be considered below.

10. Petition of the New Jersey Board of Public Utilities The New Jersey Board argues that Paragraph 74 of the Order and the associated rules work a hardship on franchising authorities. Paragraph 74 permits small systems to use the new cost-of-service rules in any proceeding that was pending on the release date of the Order. The New Jersey Board seems particularly vexed by this provision.

11. The Commission has explained that it has "little reason to question those commenters who contend that our existing rules have significantly burdened small systems." Thus it has chosen to apply the new, less burdensome rules immediately, even in situations where proceedings are pending, but not yet resolved. It has chosen however, in the interest of administrative finality, not to apply the new rules in adjudicating a final rate decision made by a franchising authority before the release date of the Order.

12. There is probably no decision the Commission could have made that would not have drawn ire. The New Jersey Board complains that in pending cases, resources have already been expended to analyze rate offerings. This is unfortunate. On the other hand, since the Commission has found relief justified for small systems, it makes little sense to delay that relief merely because, in some instances, time and effort has already been expended proceeding under the old rules. Moreover, small cable systems may take advantage of the new rules at any time. They do not have to wait some arbitrary period, subject to the burden of rate decisions now found inequitable, before they file the new FCC Form 1230. Thus, even if the Commission had decided not to make its new rules applicable to systems in the throes of a rate proceeding, these systems could merely have waited until the proceeding was over and then filed under the new rules. Such a process would not only be a silly administrative exercise, but would result in an even greater expenditure of time and effort for all concerned -- including franchising authorities.

13. The New Jersey board (and GMA, as well) is also troubled that the Commission has ruled that if a small system uses the new cost-of-service formula to

project a maximum permitted rate of $1.24 or less per channel, the burden will be on the franchising authority to determine that the rate is unreasonable. It points to a recent proceeding where it claims that the cable system (now a small system by the Commission's new definition), could, by using the small system cost-of-service formula, increase its rate from $23.00 per month to $74.00 per month. The New Jersey Board claims that since the system is given great leeway in arriving at the maximum permitted rate, the franchising authority will have to expend considerable time and energy to meet its burden of determining the rate is reasonable.

14. No one should have much of a burden determining whether a small system that seeks a wildly exorbitant rate increase has calculated correctly. That's an easy case. Even the New Jersey Board admits that it is "unlikely" that data submitted by the system could, in fact, generate a rate of $74.00 per month. Unlikely, indeed. But in theory, some systems using the new formula will be able to show the potential for significant maximum permitted rates. (This is the real gravamen of the New Jersey Board's discomfort, not its speculations about burdens of proof.) Some small systems have been charging artificially low prices for years. Costs incurred in the 80's have never been recovered, and in the 90's the Commission at first froze, and then lowered rates, preventing any accommodation with reality. Obviously, in such cases the formula may show a high maximum permitted rate. But the market will act as a constraint on the rates actually charged. There will be no $50.00 rate increases and the New Jersey Board knows it. The fact is, that the New Jersey Board is employing hyperbole as a scare tactic, and a rather ineffective one at that.

15. It is clear from the Order that the Commission is attempting to discourage unnecessary scrutiny of Form 1230 filings in order to relieve administrative burdens on both small cable systems and franchising authorities. By giving small systems greater flexibility to determine their operating costs, rate base and rate of return, the Commission did not intend to create a process where every category of expense would be subject to administrative dispute. Under the Cable Act, it is up to local franchising authorities to regulate basic cable rates according to processes determined by the Commission. The Commission has determined that the rates charged by small cable systems should be regulated with less scrutiny. Small systems still have the obligation to provide franchising authorities with existing, relevant documents justifying requested rates. What the franchising authority is dissuaded from doing, however, is making burdensome or unnecessary requests for data, or tolling a rate request without good and sufficient reason. This is the "burden" that petitioners object to.

CONCLUSION

16. CATA believes that, by its Eleventh Order on Reconsideration in this proceeding, the Commission has made a reasoned judgement to grant regulatory relief to small cable television systems. That judgement was based on a record replete with evidence and on the Commission's growing experience with cable system rate proceedings. It is apparent from their filings that petitioners in this case do not share the Commission's views. They quite simply do not wish to grant regulatory relief to small systems. Under the Cable Act of 1992, however, the responsibility for fashioning rate regulations lies with the Commission, not with each and every local franchising

authority. Petitioners have made no persuasive argument for changing the Commission's decision. CATA urges that the petitions be denied.

Respectfully submitted,

THE CABLE TELECOMMUNICATIONS ASSOCIATION

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September 27, 1995

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CERTIFICATE OF SERVICE

I, Diane Uduebor, hereby certify that on September 27, 1995, I caused to be served by certified mail, return receipt requested, the attached Consolidation Opposition to Petitions for Reconsideration on the following parties in this action:

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